

## GUAM BILL OF RIGHTS

### 48 U.S.C. § 1421b(a)-(t)

- (a) No law shall be enacted in Guam respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances.<sup>1</sup>
- (b) No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.
- (c) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.
- (d) No person shall be subject for the same offense to be twice put in jeopardy of punishment; nor shall he be compelled in any criminal case to be a witness against himself.
- (e) No person shall be deprived of life, liberty, or property without due process of law.
- (f) Private property shall not be taken for public use without just compensation.
- (g) In all criminal prosecutions the accused shall have the right to a speedy and public trial;<sup>2</sup> to be informed of the nature and cause of the accusation and to have a copy thereof; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.<sup>3</sup>
- (h) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
- (i) Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in Guam.

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<sup>1</sup> *Guam v. Guerrero*, 290 F.3d 1210 (9<sup>th</sup> Cir. 2002) (territorial court could not interpret local free exercise clause more broadly than the First Amendment's free exercise clause).

<sup>2</sup> *Guam v. Texeira*, 1986 WL 68908 \*1 (App. Div. 1986) (Guam's Bill of Rights does not include the right to jury trial, it is only a statutory right under Guam law).

<sup>3</sup> *People v. Felder*, 2012 Guam 8 ¶ 38 (an accused's Sixth Amendment right to be informed of the charges against him is a constitutional right in Guam, citing 48 U.S.C. § 1421b(g), (u)).

- (j) No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.
- (k) No person shall be imprisoned for debt.
- (l) The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion or imminent danger thereof, the public safety shall require it.
- (m) No qualification with respect to property, income, political opinion, or any other matter apart from citizenship, civil capacity, and residence shall be imposed upon any voter.
- (n) No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied.<sup>4</sup>
- (o) No person shall be convicted of treason against the United States unless on the testimony of two witnesses to the same overt act, or on confession in open court.
- (p) No public money or property shall ever be appropriated, supplied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.
- (q) The employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.
- (r) There shall be compulsory education for all children, between the ages of six and sixteen years.
- (s) No religious test shall ever be required as a qualification to any office or public trust under the government of Guam.
- (t) No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of Guam or of the United States shall be qualified to hold any public office of trust or profit under the government of Guam.

*(Aug. 1, 1950, ch. 512, § 5, 64 Stat. 385)*

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<sup>4</sup> *Guam Power Authority v. Bishop of Guam*, 383 F. Supp. 476, 481 (D. Guam 1974) (statute authorizing reduced power rates for religious institutions violated Guam Bill of Rights, 48 U.S.C. § 1421b(n), and Fourteenth Amendment under 48 U.S.C. § 1421b(u)).

## APPLICATION OF THE U.S. CONSTITUTION TO GUAM

### 48 U.S.C. § 1421b(u)

#### *U.S. Constitutional provisions that apply to Guam*

<b>U.S. CONSTITUTION</b>	<b>CASE OR STATUTE</b>
<b>Art. I, § 9, Cl. 2</b> (writ of habeas corpus not suspended)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Art. I, § 9, Cl. 3</b> (no bill of attainder or ex post facto law)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Art. I, § 10, Cl. 2</b> (imposition of imposts or duties on imports or exports by states)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Art. IV, § 1</b> (full faith and credit)	Organic Act of Guam, 48 U.S.C. § 1421b(u); 28 U.S.C. § 1738; 6 G.C.A. § 4214; <i>Stahl v. Stahl</i> , 2013 Guam 26 ¶¶ 17, 29 (applying Full Faith and Credit Clause to recognize Virginia divorce decree).
<b>Art. IV, § 2, Cl. 1</b> (privileges and immunities)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Art. IV, § 3, Cl. 2</b> (territorial clause)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Art. VI, Cl. 2</b> (supremacy clause)	<i>Guam Fresh, Inc. v. Ada</i> , 849 F.2d 436, 437 (9th Cir. 1988) ("The test for federal preemption of territorial laws is the same as the test for preemption of the law of a state under the Supremacy Clause.")
<b>Amend. I</b> (freedom of speech, religion, expression, assembly, petition)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Amend. II</b> (right to bear arms)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Amend. III</b> (quartering soldiers)	Organic Act of Guam, 48 U.S.C. § 1421b(u)

<b>Amend. IV</b> (search and seizure)	Organic Act of Guam, 48 U.S.C. § 1421b(u); <i>Barusch v. Calvo</i> , 685 F.2d 1199, 1200 (9 <sup>th</sup> Cir. 1982) (the Fourth Amendment’s protections against unreasonable searches extend to Guam).
<b>Amend. V</b> (grand jury indictment; double jeopardy; self-incrimination; deprivation of property without due process; taking of property without just compensation)	Organic Act of Guam, 48 U.S.C. § 1421b(u). <i>But see Guam v. Inglett</i> , 417 F.2d 123, 124 (9 <sup>th</sup> Cir. 1969) (extension of Fifth Amendment rights to Guam did not deprive Guam Legislature of power to determine whether offenses should be prosecuted by grand jury indictment or by information); <i>Guam v. San Nicolas</i> , 2013 Guam 21 ¶ 24 (Fifth Amendment right to grand jury not extended to Guam, right to grand jury determination of probable cause is statutory); <i>People v. Felder</i> , 2012 Guam 8 ¶ 31 (right to a grand jury indictment is not a fundamental constitutional right in Guam).
<b>Amend. VI</b> (rights of accused in criminal prosecutions)	Organic Act of Guam, 48 U.S.C. § 1421b(u); <i>People v. Mendiola</i> , 1999 Guam 8 ¶ 53 (accused’s right to a speedy trial is a fundamental right under the Sixth Amendment).
<b>Amend. VII</b> (civil trials)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Amend. VIII</b> (cruel and unusual punishment)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Amend. IX</b> (unenumerated rights)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Amend. XIII</b> (slavery & involuntary servitude)	Organic Act of Guam, 48 U.S.C. § 1421b(u)
<b>Amend. XIV, § 1, 2<sup>nd</sup> sentence</b> (privileges & immunities; deprivation of life, liberty or property without due process; equal protection)	Organic Act of Guam, 48 U.S.C. § 1421b(u); <i>Guam Society of Obstetricians and Gynecologists v. Ada</i> , 962 F.2d 1366, 1370 (9 <sup>th</sup> Cir.), <i>cert. denied</i> , 506 U.S. 1011 (1992) (substantive due process and equal protection clauses apply in Guam with the same force and effect as in the states; abortion law violated women’s right to choose to have an abortion).
<b>Amend. XV</b> (right to vote)	Organic Act of Guam, 48 U.S.C. § 1421b(u); <i>Davis v. Guam</i> , 2017 WL 930825 (D. Guam Mar. 8, 2017) (Guam’s political status plebiscite statute and definition of “Native Inhabitants of Guam” violate Fifteenth Amendment right to vote and Fourteenth

	Amendment equal protection clause), <i>appeal pending</i> , Appeal Case No. 17-15719 (9 <sup>th</sup> Cir.).
<b>Amend. XIX</b> (Women's suffrage rights)	Organic Act of Guam, 48 U.S.C. § 1421b(u)

*U.S. Constitutional provisions that do not apply to Guam*

<b>U.S. CONSTITUTION</b>	<b>CASE OR STATUTE</b>
<b>Art. I, § 8, Cl. 3</b> (the Commerce Clause)	<i>Sakamoto v. Duty Free Shoppers, Ltd.</i> , 764 F.2d 1285 (9 <sup>th</sup> Cir.), <i>cert. denied</i> , 475 U.S. 1081(1985) (the Commerce Clause does not apply to Guam)
<b>Art. I, § 9, Cls. 4-7</b> (taxes & congressional spending)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Art. I, § 9, Cl. 8</b> (no title of nobility)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Art. I, § 10, Cls. 1-3</b> (powers prohibited of states)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Art. II, § 1, Cl. 2</b> (appointment of electors to elect U.S. President)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam); <i>Attorney Gen. of Guam on behalf of All U.S. Citizens Residing in Guam, etc. v. U.S.</i> , 738 F.2d 1017, 1019 (9 <sup>th</sup> Cir. 1984), <i>cert. denied</i> , 469 U.S. 1209 (1985) (right to vote in presidential elections is not a privilege and immunity of citizenship; it is a right under Article II that inheres not in citizens but in states, which Guam is not).
<b>Art. III, § 2, Cl. 3</b> (trial shall be held in state where crime was committed but when not committed in any state, where Congress has directed)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam); <i>United States v. Obak</i> , 884 F.3d 934 (9 <sup>th</sup> Cir. 2018) (Article III's venue provision does not apply in Guam; venue was proper in both Guam and Washington state).
<b>Amend. X</b> (powers not deleted to U.S. are reserved to the states)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)

<b>Amend. XI</b> (suits against states)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XII</b> (election of president and vice president)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XIV, Cl. 1, first sentence</b> (persons born in U.S. are citizens of the U.S. and state wherein they reside)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XIV, Cls. 2-5</b> (qualifications of Representatives & Senators; public debt)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XVI</b> (income tax)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XVIII and Amend. XXI</b> (prohibition of alcohol & its repeal)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XX</b> (terms of Pres., Vice Pres., members of Congress)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XXII</b> (presidential tenure)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)
<b>Amend. XXIII</b> (presidential electors for Wash., D.C.)	Organic Act of Guam, 48 U.S.C. § 1421b(u) (no explicit application to Guam)